



## 19 NYCRR Part 134

**These are the Emergency Regulations currently in effect. They also constitute the proposed regulations that are being considered for final adoption.**

### ADMINISTRATION OF ADDRESS CONFIDENTIALITY PROGRAM

#### Section

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#### **134.1 Scope and Purpose**

19 NYCRR part 134 describes the practices and procedures of the Secretary of State relative to Executive Law section 108, Address Confidentiality Program. The Secretary of State may make, amend and rescind such rules, forms, orders and policies as are contemplated by Executive Law section 108 as necessary to carry out its purpose.

#### **134.2 Definitions**

- (a) "Agency" means any state or municipal department, board, bureau, division, commission, committee, public authority, public corporation, council, office or other governmental entity performing a governmental or proprietary function for the State or any one or more municipalities thereof, including the judiciary and the State Legislature.
- (b) "Application Assistance Provider" means a state, local or nonprofit agency designated by the Secretary of State to assist Program applicants pursuant to Executive Law section 108(3).
- (c) "Application Assistant" means an employee or volunteer of an application assistance provider.
- (d) "Certification" means the process by which an applicant is determined eligible to participate in the Program.
- (e) "Identification Card" means the card issued by the Program to a Program Participant upon certification, which includes the Program Participant's name, designated substitute mailing address, and certification expiration date.
- (f) "Program" means the Address Confidentiality Program administered by the Secretary of State. The Program is not a witness protection program.
- (g) "Program Participant" means a person certified as a participant in the Program.

#### **134.3 Application Assistance**

- (a) All application assistants must:

- (1) successfully complete training provided by the Program;
  - (2) be an employee or volunteer of an Application Assistance Provider;
  - (3) agree to adhere to the policies, procedures and directions of the Program.
- (b) Application assistant training shall be valid for two years.
  - (c) The application assistant must agree not to discriminate against any client, or potential Program participant, because of race, creed, color, national origin, gender, sexual orientation, age, or mental, physical or sensory disability.
  - (d) An application assistant is not an employee or agent of the Department of State or the Program. The application assistant will not hold herself or himself out as, or claim to be an officer or employee of the Department of State or the Program simply because she or he is a Program application assistant and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department of State or the Program.
  - (e) No individual shall hold herself or himself out as, or claim to be an application assistant if he or she is no longer a volunteer of or employee of an application assistance provider;
  - (f) No individual shall hold herself or himself out as, or claim to be an application assistant if it is determined by the Program that he or she has failed to abide by any requirement in this section or has failed to act in accordance with written policies and procedures of the Program.

#### **134.4 Application Assistance Providers**

- (a) An application to be designated an Application Assistance Provider shall be on forms provided by the Program.
- (b) A designation as an Application Assistance Provider shall be valid for two years.
- (c) An application assistance provider shall:
  - (1) agree to adhere to the policies, procedures and directions of the Program;
  - (2) agree to adhere to the instructions and terms provided in the application assistance provider application;
  - (3) agree to not to discriminate against any client, or potential Program Participant, because of race, creed, color, national origin, gender, sexual orientation, age, or mental, physical or sensory disability.
- (d) An Application Assistance Provider is not a division or agent of the Department of State or the Program. No employee or volunteer of an Application Assistance Provider shall hold herself or himself out as, or claim to be an officer or employee of the Department of State or the Program and will not make any claim, demand, or application to or for any right or privilege applicable to an officer or employee of the Department of State or the Program.
- (e) No agency shall hold itself out to be an Application Assistance Provider if the agency is no longer a designated Application Assistance Provider;
- (f) An agency's designation as an Application Assistance Provider will be terminated by the Program if it is determined by the Program that the agency has failed to abide by any requirement in this section or has failed to act in accordance with written policies and procedures of the Program.

#### **134.5 Program Participant Application and Certification Process**

- (a) Each Program Participant must be certified by the Program to participate in the Program.
- (b) Program Participant certification will be granted only where the prospective Program Participant:
  - (1) is a current New York resident;
  - (2) is a victim of domestic violence as defined in Section 459-a of the Social Services Law;
  - (3) affirms under penalties of perjury that the disclosure of his or her address will threaten the safety of the applicant or applicant's minor children or the minor or the incapacitated person on whose behalf the application is made;
  - (4) completes, signs and dates an application that provides all necessary information required under Executive Law section 108(2); and
  - (5) agrees in writing to abide by all written Program rules, policies and procedures.
- (c) Prior to certification of the application, the Program may request additional documentation from the Program applicant relevant to a determination of eligibility.
- (d) A properly completed application shall be effective on the day that it is certified by the Program.
- (e) An individual who is certified as a Program Participant shall be issued an identification card that includes her or his name, substitute mailing address, and certification expiration date.
- (f) The term of a Program Participant's certification shall be four years following the effective date of her or his application unless the certification is withdrawn or canceled before that date.

### **134.6 Responsibilities of a Program Participant**

(a) A Program participant:

- (1) must notify the Program in writing of a change in the Program Participant's contact information at least seven days in advance of the change, or immediately thereafter if such change is necessitated by an emergency or other unforeseen event;
- (2) must notify the Program of any significant change in the information contained in her or his application; and
- (3) must return the identification card to the Program immediately upon withdrawal or cancellation of participation in the Program.

### **134.7 Responsibilities of State and Local Agencies**

- (a) A Program Participant may request, at the time of creation of a new record, that a state or local agency use a substitute address designated by the Program as her or his residential or mailing address.
- (b) A Program Participant shall show her or his original identification card to the agency official creating a new record and request address confidentiality through use of a substitute address in lieu of her or his actual address. The substitute mailing address shall appear on the Program Participant's identification card.
- (c) Agency personnel may contact the Program to verify a participant's certification in the Program. They may make a file photocopy of the identification card and shall immediately return the identification card to the Program Participant after making the photocopy.
- (d) An agency shall accept the applicable designated substitute address unless the agency has received a written waiver from the Program.
- (e) An agency shall not question the Program Participant about the details or circumstances of her or his inclusion in the Program. Rather, the agency shall accept the determination made by the Program that she or he is a qualified Program Participant.

### **134.8 Agency Exemption Request**

- (a) Application for a waiver. An agency may request a waiver pursuant to Executive Law section 108(4) to use the actual addresses of program participants by submitting a written application to the Program.
  - (1) Each application for a waiver shall include:
    - (i) identification of the agency program or activity for which a waiver is sought and a description of how actual addresses are currently used in the administration of that program or activity;
    - (ii) identification of the statute or administrative rule that demonstrates the agency's bona fide requirement and authority for the use of the actual address of a Program Participant;
    - (iii) identification and a description of the specific record or record series for which the waiver is requested;
    - (iv) an explanation as to how the acceptance of the substitute address for a Program Participant will prevent the agency from meeting a statutory or administrative obligation;
    - (v) an explanation as to why the agency cannot meet its statutory or administrative obligations by a change in its internal procedures;
    - (vi) a description of the manner by which the confidentiality of the record or record series will be maintained; and
    - (vii) identification of the individuals who will have access to the record or record series.
  - (2) An application for a waiver for an agency program or activity that requires the agency to communicate to or receive communication from another agency or to the federal government of the actual addresses of Program Participants shall also include:
    - (i) identification of the agency or federal government agency with whom the actual addresses of Program Participants would be communicated;
    - (ii) identification of the statute or administrative rule that demonstrates the agency's bona fide requirement and authority to communicate the actual address of a Program Participant with another agency;
    - (iii) an explanation of how communication of the substitute address for a Program Participant will prevent the agency from meeting a statutory or administrative obligation; and
    - (iv) the status of the other agency's waiver application, if applicable and if known.
  - (3) Each application for a waiver shall also include certification by the head of the agency that the agency will maintain the confidentiality of actual address information collected and maintained pursuant to the requested waiver by redacting the actual address information from a record when it is released to any person and will not make the Program Participant's actual address available for inspection or copying unless authorized to do so pursuant to Executive Law section 108(4)(b).

(b) Application review. The Program shall review and determine whether to approve or deny an agency's request for a waiver.

(1) The review of an agency's request for a waiver shall include, but not be limited to, an evaluation of the information required to be provided under this part.

(2) A determination to deny an agency's waiver request shall be made in writing and shall include a statement of the specific reasons therefore.

(3) An agency may request reconsideration of a denied waiver request by resubmitting its written request to the Secretary of State. The reconsideration request shall be accompanied by additional data, information and an explanation of corrective action taken to alleviate concerns and considerations identified in the Program's denial determination.

(4) During the pendency of the review and reconsideration of an agency's waiver request, the agency shall accept and use a Program Participant's substitute address for any records for which the waiver was requested.

(c) Waivers. If the Program determines that an agency has a bona fide statutory or administrative requirement for the use of a Program Participant's actual address information and that the actual address information will be used only for those statutory or administrative purposes, the Program may issue a written waiver for the agency. When granting a waiver, the Program may include:

(1) a statement of the agency's obligation and ability to maintain the confidentiality of a Program Participant's address information;

(2) limitations on use of and access to that address information;

(3) designation of the record format in which the address information may be maintained;

(4) the term during which the waiver is authorized for use by the agency; and

(5) any other provisions and qualifications determined appropriate by the Program.

(d) When a Program Participant requests use by an agency of the substitute address in a record, and the agency has received a waiver for that record, the agency shall immediately provide evidence of such waiver to the requesting Program Participant.

(e) The Secretary of State shall keep a record of all waivers and all documentation relating to requests for waivers.

#### **134.9 Cancellation of Program Certification**

(a) Program certification shall be cancelled if the Program Participant:

(1) is no longer a resident of New York; or

(2) provides false information in the Program application or to any state or local agency in connection with the Program; or

(3) uses or attempts to use the Program to evade law enforcement or to avoid establishing or following child custody or visitation orders.

(b) Program certification may be cancelled:

(1) fourteen days from the date the Program first receives mail, forwarded to the Program Participant's address, returned as non-deliverable; or

(2) if the Program Participant fails to notify the Program in writing that he or she has changed his or her name within fourteen days of the date of the name change; or

(3) fails to notify the Program in writing of a change in contact information within fourteen days of such change; or

(4) if the Program Participant fails to agree to or abide by any written Program rule, policy or procedure previously communicated to the Participant.

(c) The Program will notify the Program Participant of the cancellation of the participant's certification by mail addressed to the participant's latest address in the Program records.

(d) Upon cancellation of Program certification, the Program Participant shall immediately return the identification card to the Program.

(e) Upon Program certification cancellation, any former Program Participant's mail received by the Program after cancellation will be returned to sender.

#### **134.10 Appeal of Cancellation of Program Certification**

(a) The Secretary of State or the Secretary's designee shall review appeals of cancellation of Program certification.

(b) Within thirty days after the date of the cancellation, the former Program Participant may request, in writing, that the Secretary of State reconsider the Program's decision to cancel Program certification. The Secretary of State may allow Program certification to remain in place during the pendency of the appeal if the former Program Participant

establishes that the cancellation was due to accident or oversight.

(c) The Secretary of State or the Secretary's designee shall notify the applicant by certified mail, return receipt requested, of its decision within thirty days after receipt of the appeal.

#### **134.11 Program Participation Renewal**

(a) A currently qualified Program Participant may apply to renew her or his Program certification. A renewal notice shall be sent to the Program Participant at least thirty days before the expiration of the current authorization.

(b) If the Program determines that the Program Participant is eligible to participate in the Program, he or she shall certify the participant for an additional four-year term and issue a new identification card. The Program Participant shall return his or her expired identification card to the Program.

#### **134.12 Service of Process**

(a) Service of process.

(1) Service of process on the Secretary of State as agent of a Program Participant, a Program Participant's minor child, incapacitated person or other adult member of the Program Participant's household shall be made by personally delivering to and leaving with the Secretary of State or a deputy, or with any person authorized by the Secretary of State to receive such service, at the office of the Department of State in the city of Albany, duplicate copies of such process together with the statutory fee, which fee shall be a taxable disbursement. Service of process on such Program Participant, a Program Participant's minor child, incapacitated person or other adult member of the Program Participant's household shall be complete when the Secretary of State is so served. The Secretary of State shall promptly send one of such copies by certified mail, return receipt requested, to such Program Participant, a Program Participant's minor child, incapacitated person or other adult member of the Program Participant's household at the actual address of the Program Participant on file with the Department of State.

(2) Nothing in this section shall affect the right to serve process in any other manner permitted by law.

(b) Process Records and Certificates of the Department of State.

The Program shall keep a record of each process served upon the Secretary of State under Executive Law section 108, including the date of service. It shall, upon request made within ten years of such service, issue a certificate under its seal certifying as to the receipt of the process by an authorized person, the date and place of such service and the receipt of the statutory fee. Process served upon the Secretary of State pursuant to Executive Law section 108 shall be destroyed by him or her after a period of ten years from the date of such service.

#### **134.13 Disclosure of Program Participant's Information**

(a) The Program shall disclose a Program Participant's information:

(1) upon written request acknowledged by the chief commanding officer of a law enforcement agency or his or her designee in connection with a law enforcement matter; or

(2) upon receipt of an original or court-certified copy of a court order which specifically orders the disclosure of a particular Program Participant's information and the reason therefore.

(b) The Program will notify the Program Participant of the disclosure of his or her actual address pursuant to a court order or law enforcement request by mail immediately upon such disclosure.

(c) The Program may verify a Program Participant's participation in the Program upon receipt of a written request to verify a Program Participant's participation in the Program when such verification has been specifically authorized by the Program Participant.

(d) The Program will notify the Program Participant by mail of any request to verify his or her participation in the Program.